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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0254]

RIN 1625-AA11

Regulated Navigation Area, Zidell Waterfront Property,
Willamette River, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) at the Zidell Waterfront Property located on the Willamette River in Portland, Oregon. This RNA is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This RNA will prohibit activities that could disturb or damage the engineered sediment cap.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being

available in the docket, are part of docket USCG-2011-0254 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0254 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail BM1 Silvestre Suga III, Waterways Management Division, Coast Guard Sector Columbia River, telephone 503-240-9319, e-mail Silvestre.G.Suga@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 8, 2011, we published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area, Zidell Waterfront Property, Willamette River, OR, in the Federal Register (76 FR 48070). We received no comments on the

proposed rule. There were no requests made for a public meeting regarding this rule and none were held. No other documents have been published for this rulemaking.

Basis and Purpose

The Zidell Waterfront Property is placing an engineered sediment cap over contaminated sediments adjacent to the west bank of the Willamette River between approximate river miles 13.5 and 14.2 as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. Geographically this location starts at approximately the west bank of the Marquam Bridge and continues southerly, along the west bank of the Willamette River to the North end of Ross Island.

The engineered sediment cap is designed to be compatible with normal port operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of large vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and shoreline soil in these areas. As such, this RNA will help ensure the cap is protected and will do so by prohibiting certain maritime activities that could disturb or damage it.

The engineered sediment cap will also reduce the depth of the water close to the west bank of the Willamette River and, as a result, may limit some vessels from using that area of the river.

Background

The location of the engineered sediment cap was previously used for industrial activities related to shipbuilding and dismantling, scrap metal operations, wire burning, aluminum smelting, and housing construction. It was determined that the site soils and sediments contain contaminants, including metals, petroleum hydrocarbons and associated polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and tributyltin, which present unacceptable levels of risk to human and ecological receptors. Following extensive analysis, the engineered sediment cap was deemed appropriate by the Oregon DEQ because the engineered sediment cap will protect human and ecological receptors from exposure to contamination, and the establishment of this RNA prevents activities that could result in an unacceptable threat to public health and the environment.

Discussion of Comments and Changes

The Coast Guard received no comments during the

comment period such that no changes have been made to the rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The modification of the existing anchorage does not have any significant costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities: the owners or operators of vessels operating in the area covered by the RNA. The RNA will not have a significant economic impact on a substantial number of small entities, however, because the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for activities that may damage the engineered sediment cap. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the

Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph 34 (g) of the instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.1337 to read as follows:

§ 165.1337 Regulated Navigation Area, Zidell Waterfront
Property, Willamette River, OR.

(a) Regulated Navigation Area. The following area is a regulated navigation area: All waters within the area bounded by the following points: 45° 29' 55.12"N/122° 40' 2.19"W; thence continuing to 45° 29' 55.14"N/122° 39' 59.36"W; thence continuing to 45° 29' 56.30"N/122° 39' 59.09"W; thence continuing to 45° 29' 57.51"N/122° 39' 59.64"W; thence continuing to 45° 29' 58.72"N/122° 39' 59.64"W; thence continuing to 45° 30' 0.52"N/122° 39' 59.94"W; thence continuing to 45° 30' 1.95"N/122° 40' 0.46"W; thence continuing to 45° 30' 3.44"N/122° 40' 0.78"W; thence continuing to 45° 30' 4.87"N/122° 40' 0.95"W; thence continuing to 45° 30' 7.33"N/122° 40' 1.80"W; thence continuing to 45° 30' 8.11"N/122° 40' 2.69"W; thence continuing to 45° 30' 8.83"N/122° 40' 3.81"W; thence continuing to 45° 30' 13.06"N/122° 40' 5.39"W; thence continuing to 45° 30' 15.30"N/122° 40' 6.93"W; thence continuing to 45° 30' 17.78"N/122° 40' 8.16"W; thence continuing to 45° 30' 20.53"N/122° 40' 9.07"W; thence continuing to 45° 30' 20.90"N/122° 40' 11.52"W; thence continuing to 45° 30' 24.04"N/122° 40' 12.53"W; thence continuing to 45° 30' 23.79"N/122° 40'

14.87"W; thence continuing along the shoreline to 45° 29' 55.12"N/122° 40' 2.19"W. Geographically the regulated navigation area covers all waters adjacent to the Zidell Waterfront Property on the Willamette River extending from the west bank of the river out 200 to 400 feet into the river depending on the exact location between approximate river mile 14.2 near the Ross Island Bridge and approximate river mile 13.5 near the Marquam Bridge.

(b) Regulations. All vessels are prohibited from anchoring, dragging, dredging, or trawling in the regulated navigation area established by this section. See 33 CFR part 165, subpart B, for additional information and requirements.

Dated: December 30, 2011

K. A. Taylor
Rear Admiral, U.S. Coast Guard
Commander, Thirteenth Coast Guard District

[FR Doc. 2012-7784 Filed 03/30/2012 at 8:45 am; Publication
Date: 04/02/2012]